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alarm and he will think twice of sitting on his land which has been the cause of his ruin. I therefore think a serious situation has been caused which requires to be immediately allayed."

* The Hon. Sir ARCHIBALD CAMPBELL:—"Mr. President, Sir, I have not got the copies before me of the hon. Member's question and my answer as recorded, but questions based on a reference to the economic situation at some date in the future would have been hypothetical. I should not have given any answer to a hypothetical question because it is, I believe, not be in order to ask hypothetical questions. I understood the hon. Member's to be reference to the present economic situation. What it is going to be two years hence it is not possible for me or the Government to foretell. With reference to the resettlement of the Kurnool district, we have merely appointed a settlement officer to make some preliminary enquiries for the collection of statistics for the preparation of the usual scheme report. We do not expect to get that for a year. Then it will probably be placed before the House and the hon. Members will have ample opportunity to discuss the proposals in the scheme report."

* The Hon. the PRESIDENT:—"I think by this time the hon. Member's doubt should have been cleared. There is no urgency for this motion. I, therefore, disallow it."

III.—A BILL TO FACILITATE THE WORKING OF CO-OPERATIVE LAND MORTGAGE BANKS IN THE PRESIDENCY OF MADRAS (BILL No. 5 OF 1933.)

* The Hon. the PRESIDENT:—"The House will now proceed with the Madras Co-operative Land Mortgage Banks Bill. The House will now take up clause 8."

CHAPTER III.

Clause 8.

* The Hon. Mr. P. T. RAJAN:—"With your permission, Sir, I will move clause 8 as amended. In view of the discussions of hon. Members the other day, I hope this will be acceptable to the House.

"Substitute the following for clause 8:—

- '8 (1) *If any instalment payable under a mortgage executed in favour of a mortgage bank or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the Committee may, in addition to any other remedy available to the bank, apply to the Registrar or to any person appointed by the Local Government under section 3 of the Madras Co-operative Societies Act, 1932, to assist the Registrar for the recovery of such instalment or part by distraint and sale of the produce of the mortgaged land including the standing*

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crops thereon. On receipt of such application, the Registrar or such person may, notwithstanding anything contained in the Transfer of Property Act, 1882, take such action as is necessary to distrain and sell such produce :

Provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due.

(2) The distress shall not be excessive; the value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the costs of sale.'

"In the clause originally moved which was accepted by the Select Committee, the power of distraint was vested in the committee of the primary bank. Subsequently it was amended with a view to meet the objections raised by the hon. Members of the House and power of distraint has been given to the officers of the Co-operative department. It was also suggested that the officer should not be below the rank of the sub-deputy registrar. In order to meet their objection, I have introduced the following clause. Under this the Government have issued a Government Order saying that 'any other person' refers to an officer of the rank of a deputy registrar or sub-deputy registrar. Then, with regard to clause (2) a statutory direction is necessary and so that clause has been included so that excessive distraints may not be made. I think the House will accept the amendment."

The Hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

* The Hon. the PRESIDENT:—"I hope the previous amendment is withdrawn formally."

* The Hon. Mr. P. T. RAJAN:—"Yes, I shall withdraw it."

* Mr. A. RANGANATHA MUDALIYAR:—"Mr. President, Sir, if I intervene in this debate it is just to elicit from the Government information in regard to one or two important points. I take it, Sir, that the idea of Government is to recover the arrears due to the land mortgage bank as they do the arrears of land revenue. Practically, it comes to that. If the rules are elastic and reasonable to the defaulter, I will rejoice exceedingly. But, Sir, there is a provision in the Revenue Recovery Act by which the defaulter can pay the amount in arrears any day before the day fixed for the sale of property and have the property released. I think that there is no corresponding provision in this Bill whereby a defaulter, if he happens to gather money, can pay the arrears and have the property released."

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* Diwan Bahadur M. RAMACHANDRA RAO:—" Mr. President, Sir, I do not see any difficulty at all in this matter. As soon as the distraint is made, a copy of the demand is served upon the defaulter. Afterwards, he has an opportunity to pay the arrears. If within 15 days of the date of distraint, the defaulter does not pay the amount for which distraint is effected, then the distrainer brings the property for sale in auction, the distrained property or such part thereof as may be necessary to satisfy the demand. My Friend raised the question whether the sale officer will, notwithstanding the tender of the amount at the time of the sale still continue to sell the property. This is a contingency which will never happen and has not been contemplated by the law now being enacted. I do not think there is any difficulty in this matter."

The amendment was put and carried.

Clause 8, as amended, was put and carried.

Clause 9.

Sub-clause (2).

* The Hon. Mr. P. T. RAJAN:—" I beg to move—

(i) *In line 3, for the words "adult member," substitute the words "adult male member" and*

(ii) *in line 7, for the words "on his land," substitute the words "of his lands"."*

"This is only to make the position clear and I hope the House will accept it."

The Hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—" I second it."

The amendment was put and carried.

Clause 9, as amended, was put and carried.

Clause 10.

Sub-clause (1).

* The Hon. Mr. P. T. RAJAN:—" I beg to move—

"In line 2, for the word "notice" substitute the word "demand."

In lines 4 and 5, for the words "the distrainer may apply to the sale officer for the sale in auction of" substitute the following "the distrainer may sell in auction."

In line 6, after the words "as may" insert the words "in his opinion."

Omit the last sentence."

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“ With reference to the substitution of ‘ demand ’ for ‘ notice ’ it is only to make it in accordance with section 9. The second, namely, that the distrainer may sell it, is in consequence of amendment to clause 8. The third is only to make the intention clear. The last is consequential.”

Mr. V. P. NARAYANAN NAMBIYAR:—“ I second it.”

The amendment was put and carried.

Sub-clause (2).

* The Hon. Mr. P. T. RAJAN:—“ Sir, I move—

‘ For this sub-clause, substitute the following sub-clauses:—

- “ (2) From the proceeds of such sale, a deduction shall be made at a rate not exceeding one anna in the rupee on account of the costs of the sale.
- (3) From the balance shall be deducted the expenses incurred by the distrainer on account of the distraint.
- (4) The remainder, if any, shall be applied to the discharge of the amount for which the distraint was made.
- (5) The surplus, if any, shall be delivered to the person whose property has been sold and he shall be given a receipt for the amount discharged from the proceeds of the sale.”

“ Sir, these amendments are of a consequential character and are merely verbal.”

Mr. V. P. NARAYANAN NAMBIYAR:—“ I second it, Sir.”

The amendment was put and carried.

Clause 10, as amended, was put and carried.

Clause 11.

The Hon. Mr. P. T. RAJAN:—“ Mr. President, I move—

‘ that sub-clause (1) of clause 11 be omitted; and in consequence, the brackets and figure “ (2) ” in sub-clause (2) be also omitted ’.

“ The first part of the amendment is moved for the reason that no sale officer as distinguished from the distraining officer is contemplated in the Bill. That is why I move that sub-clause (1) be omitted. The second part of the amendment is a consequence of the first amendment.”

Mr. V. P. NARAYANAN NAMBIYAR:—“ I second it, Sir.”

The amendment was put and carried.

Clause 11, as amended, was put and carried.

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Clause 13.

* The Hon. Mr. P. T. RAJAN:—" Mr. President, Sir, I move—

' (i) In lines 1 to 4, for the opening words "*In exercise of the power of sale . . . may apply to the sale officer*", substitute the words, "*In exercise of the power of sale conferred by section 12, the Committee of a mortgage bank or any person duly authorized by it may apply to the sale officer.*"

(ii) In line 6, between the words "*shall*" and "*sell*" insert the following: "*after giving notice to all the persons referred to in section 12.*"

(iii) Number the two sentences of this clause as sub-clauses (1) and (2) respectively.'

" The reasons for these amendments are: the first amendment is intended to make the position clear; the second amendment is moved because it was desired by hon. Members of this House that notice should be given to the parties concerned before the actual sale takes place and in order to meet the wishes of hon. Members, I have tabled this amendment. The third amendment is intended to make the position clear."

Mr. V. P. NARAYANAN NAMBIYAR:—" I second it, Sir."

The amendment was put and carried.

Clause 13, as amended, was put and carried.

Clause 14.

Sub-clauses (1), (2) and (3).

* The Hon. Mr. P. T. RAJAN:—" Sir, I move—

' (i) In lines 1 to 2 of sub-clause (1) for the words "*sold under the Act,*" substitute the words "*sold under this Chapter*".'

This is merely verbal and is intended to make the clause more precise.

' (ii) In lines 5 to 7 of sub-clause (1) for the words "*apply to the governing body to have the sale set aside on his depositing at the office of the mortgage bank*", substitute the words "*apply to the committee of the mortgage bank concerned to have the sale set aside on his depositing at the office of such bank*".'

This is also intended to make the position more clear.

' (iii) In line 1 of sub-clause (2), for the words "*governing body,*" substitute the word "*committee*".'

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‘(iv) For sub-clause (3), substitute the following:—

“(3) Where no application is made under sub-section (1) or where such application is made and disallowed, the committee shall apply to the principal co-operative officer of the district to make an order confirming the sale and on such officer confirming the sale, it shall become absolute.”

“The amendments to sub-clauses (2) and (3) are made with a view to meet the wishes of the House, namely, that the sale should be confirmed not by the committee of the bank, but by an officer of the department. I hope the House will accept the amendments.”

Mr. V. P. NARAYANAN NAMBIYAR:—“I second it, Sir.”

* Sriman M. G. PATNAIK Mahasayo:—“Mr. President, in this clause, the putting in of an application is contemplated for setting aside a sale. But, even in the Civil Courts, though money is deposited if an application is not made, the sale is not set aside. Therefore, such a trouble may arise if the word ‘apply’ is allowed to stand. Whether there is an application or not, if the money is deposited, the sale should be set aside as a matter of course. Otherwise complications may arise. It should be possible to set aside a sale as a matter of course if a deposit is made within that period whether there is an application or not. I therefore object to the provision that there should be an application for it.”

* Mr. C. BASU DEV:—“Mr. President, I wish to address this House on the amendment moved by the Hon. Minister regarding sub-clause (3) of clause 14. Sir, under the Civil Procedure Code, after sale and before confirmation of the sale, two applications may be made for setting aside the sale—one is by the deposit of money and the other is on account of fraud or irregularity in sale. Under this provision, we are being asked to give up that statutory provision of the Civil Procedure Code, which enables a person interested in the property to apply for the setting aside of the sale on the ground of fraud or irregularity. We are asked to invest the bank with certain extraordinary privileges in the hope that this bank is going to do good to the ryots of this Presidency. On the last occasion, when this Bill was discussed on the floor of this House, I had reason to deplore that no member of this House was furnished with a copy of the administration report of this bank, which has been, on the admission of the Expert Member himself, working for the last three and a half years and has been operating with over 30 lakhs of rupees. In the preamble, it is stated that ‘Whereas it is expedient to facilitate the working of co-operative land mortgage banks in the Presidency of Madras in order to, provide for the grant of long-term loans to owners of land, with a view to enable them to discharge their debts, to carry out agricultural improvements, to acquire land for the formation of economic holdings and other like

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purposes and thereby to promote thrift and self help among them.' Sir, we have anxiously waited to know how far during the last three and a half years with an amount of 30 lakhs in its hands, this bank had translated into action these very excellent objects with which this bank was started. If we are given an inkling of the working of this bank or if we are told to what extent this bank had been able to help the ryots, we are quite prepared to invest the bank with all the extraordinary privileges that this bank wants. In the absence of any such information regarding the working of that bank, I think it is certainly not proper to ask us to give up even the statutory provision of the Civil Procedure Code. It is not fair to ask this House to vote for extraordinary powers without telling it to what extent this bank has been able to translate their excellent objects into action."

* Mr. K. P. RAMAN MENON:—" Mr. President, Sir, I believe that Mr. Patnaik is mistaken in thinking that an application is essential in the matter of setting aside a sale when money is deposited. I would like to draw his attention to sub-clause (2) of clause 14, where it is stated 'If such deposit is made, the governing body shall make an order setting aside the sale.' You will also see, Sir, that wherever the words 'governing body' occurs, the word 'committee' has been put in and in some places 'the Registrar of Co-operative Societies,' so that the object of the amendment is merely to bring the clause in conformity with the amendments previously passed. According to sub-clause (2), the sale will be set aside when the deposit is made, and so an application is not an essential ingredient to setting aside the sale, so that, if the deposit is made, whether there is an application or not, the officer that sells the property is, by virtue of this clause, compelled to set aside the sale and he has no choice in the matter. So, the difficulty pointed out by my friend, Mr. Patnaik, will not arise.

" With reference to the objections raised by Mr. Basu Dev on the ground of want of application I think I may say that we may safely trust the bank with reference to these proceedings. For, as a matter of fact, we have allowed the Government to guarantee all the money and so we may also expect the bank not to commit any fraud or irregularity." 11-45 a.m.

The amendment was put and carried.

* Mr. K. P. RAMAN MENON:—" Mr. President, Sir, before you put to vote the clause as amended, I wish to say a few words on the clause as amended. I don't see here any provisions similar to those obtaining in Order XXI, Rules 89 and 90 of the Civil Procedure Code. Here it is only said, 'Where the money is deposited the sale will be set aside.' Nothing more is said. There is no specific provision corresponding to Order XXI, Rule 93, to the effect that the money deposited shall be paid over to the depositor. All that is stated is that anybody who is interested in the property may deposit money and also 5 per centum

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of the sale amount, and if that is done the sale will be set aside. What shall be done with the balance money is not said at all. So I wish to see here provisions similar to those in the Civil Procedure Code inserted. And then who is to take the 5 per cent amount?"

* Rao Bahadur T. A. RAMALINGAM CHETTIYAR:—"Mr. President, Sir, this is only a supplemental Act. There is already the Co-operative Societies Act under which these banks are registered, and under that Act rules are framed for the sale of attached property as well as mortgaged property, and also with regard to what should be done with the money realized by sale as well as the deposit amount. I believe such things as these are to be governed by those rules; otherwise there will be a number of places in this Bill where we will find gaps which have to be filled up."

Diwan Bahadur M. RAMACHANDRA RAO:—"Sir, I think Mr. Ramalingam Chettiyar is perfectly right in the view he has taken that this Bill is supplemental to the Co-operative Societies Act, and that the provisions of that Act with regard to the disposal of the sale-proceeds and the 5 per cent deposit would apply to this Bill also. Otherwise we will have to embody all those provisions here also. As a matter of fact this Bill is conceived only to bring in certain special supplemental provisions to those contained in the Co-operative Societies Act. So there is no cause for alarm. So far as the money deposited is concerned it will be paid over to the mortgagor, and as regards the 5 per cent amount it will be given to the party concerned under the provisions of the Act."

* Sriman M. G. PATNAIK Mahasayo:—"Sir, section 11 empowers Government to make rules for the manner of effecting distraint, for the custody, preservation and sale of the distrained property, etc., but does not empower Government to make rules with regard to the disposal of the sale-proceeds or for the payment of the 5 per cent deposit. (The Hon. Mr. P. T. Rajan: 'See clause 21'.) Yes, I see. But even that does not say that the rules framed under this section shall become law so far as these matters are concerned. In the absence of such specific provisions, how can you say there is no cause for alarm?"

Diwan Bahadur M. RAMACHANDRA RAO:—"Sir, I may tell my hon. Friend that the land mortgage banks are now governed by the Co-operative Societies Act. In the actual working of the Banks it has been found that these banks require some special supplemental provisions besides those contained in the Co-operative Societies Act. It is with that purpose that the present Bill has been brought in. These land mortgage banks will continue to be governed by the Co-operative Societies Act also."

* Sriman M. G. PATNAIK Mahasayo:—"But where is it stated in this Bill that those sections of the Co-operative Societies Act will apply to these cases? There must be some clause somewhere in the whole of

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this Bill to that purport, or at least there must be some connexion between the rules framed under this Bill and those in the Co-operative Societies Act. If you read the whole Bill you don't find any such reference at all. In the absence of such connexion how can you say that the provisions of the Co-operative Societies Act will apply to this Bill?"

Mr. P. V. KRISHNAYYA CHOUDARI:—" May I point out to my friend that the Land Mortgage Banks are registered under the Co-operative Societies Act. We are not now legislating a separate Act for the Land Mortgage Banks. Such of the rules as are already framed under the Co-operative Societies Act will continue to apply to the Land Mortgage Banks even in spite of this Bill. And this is the point I wish to put before my hon. Friend, Mr. Patnaik."

* The Hon. Mr. P. T. RAJAN:—" The rules of the Co-operative Societies Act, as has been pointed out . . . "

* The Hon. the PRESIDENT:—" Order, order, let us proceed more orderly. There has already been much talking across the table."

* The Hon. Mr. P. T. RAJAN:—" With reference to the point made by Mr. Raman Menon, I may tell him that the rule will be examined, and if there is found anywhere any *lacuna* it will be set aright."

* Mr. T. C. SRINIVASA AYYANGAR:—" A reference to clause 21 will set at rest the doubts. This clause enables rules to be made only in connexion with matters relating to Chapter IV. Those rules will not apply to sales conducted under Chapter III. There is difference between the sale under Chapter IV and the sale under Chapter III. Clause 11 under Chapter III deals with the power to make rules for the manner of effecting distraint, for the custody, preservation and sale of the distrained property, etc. But clause 21 under Chapter IV deals with the rule-making power of Government in regard to the sale of mortgaged property, and sub-clause (2) enables Government to frame rules for carrying out the provisions of that chapter alone. Hence those rules cannot apply to Chapter III. So I hope the Government will bear in mind the suggestions made and make the necessary rules therefor, under clause 21."

Clause 14 as amended was put and carried.

Clause 15.

* The Hon. Mr. P. T. RAJAN:—" Mr. President, Sir, I beg to move—

' that in line 1, for the words and figures " under section 13 "
substitute the words " under this chapter."

This is only a verbal amendment.

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- (ii) In lines 6 to 7, for the words "the mortgage property", substitute the words "the mortgaged property."

This also is a verbal amendment.

- (iii) In line 8, for the words "on account of that mortgage" substitute the words "on account of the mortgage."

This also is a verbal amendment.

- (iv) Renumber the clause as sub-clause (1) of clause 15 and add the following as sub-clause (2):—

(2) (a) Any person dissatisfied with the decision of the sale officer in regard to the distribution of such residue may, within thirty days of the communication to him of such decision, institute a suit to establish the right he claims in the civil court.

(b) The sale officer shall not distribute such residue until thirty days have elapsed from the communication of his decision to all the persons concerned or, if a suit has been instituted within the said period of thirty days by any such person, until the suit is disposed of or otherwise than in accordance with the decision of the court therein."

"With reference to this new clause, this applies only to cases where any decision is given by the sale officer. The dissatisfied party is given a chance to go to a court of law, if he is aggrieved by the decision of the sale officer. And until court decides the sale officer should not distribute the residue."

Explanation.—In this section "court" means the court which would have jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold is situated."

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

The amendment was put and carried.

Clause 15, as amended, and clause 16 were put and carried.

Clause 17.

* The Hon. Mr. P. T. RAJAN:—"Mr. President, Sir, I beg to move

- (i) in line 4, for the words and figures "not being a lease falling under section 23" substitute the words "other than a lease for a period not exceeding five years" and

add the following as sub-clause (3):—

- (3) In dealing with cases under sub-sections (1) and (2) the court shall follow as far as may be the provisions of Order XXI, Rules 95–103 of the Code of Civil Procedure, 1908."

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“ Sir, the first amendment is brought in only to make the meaning clear. The second amendment is added in order to meet the wishes of the hon. Members of this House, i.e., to safeguard the interests of those whose properties are in possession and who are not parties to any transactions previously.

“ I also move—

‘ For the “ *Explanation* ” substitute the following:—

“ *Explanation.—In this section, ‘ court ’ shall have the same meaning as in section 15.* ” ’ ’ ’

Mr. V. P. NARAYANAN NAMBIYAR:—“ I second it.”

Sriman M. G. PATNAIK Mahasayo:—“ Sir, so far as this section is concerned, I wish to say a few words. This section is really explanatory.”

* The Hon. the PRESIDENT:—“ The hon. Member must address the Chair.” 12 noon.

* Sriman M. G. PATNAIK Mahasayo:—“ I think the hon. Member requires some reply.”

* The Hon. the PRESIDENT:—“ Even that reply should be communicated through the Chair.”

* Sriman M. G. PATNAIK Mahasayo:—“ I shall do that, Sir.

“ Section 69 of the Transfer of Property Act is proposed to be incorporated in this Act. So far as that section is concerned, it applies only to Presidency towns and also to certain other cases which we need not consider now. Drastic provisions of section 69 are going to be introduced in this Act so that they may have mortgages of lands situated in the mufassal and also take away the rights of those who have acquired such rights over the mortgaged property subsequent to the property having been mortgaged in favour of the Land Mortgage Bank. There is no reason why that should be done. All this is done to give title to the purchaser free from all encumbrances. That will give rise to some difficulty. Very often it may not be possible for the mortgagor who has mortgaged his property to the bank to raise a loan without subsequently mortgaging it to somebody else. The money might have been raised to pay the instalments to the Mortgage Bank itself. In such a case there is no reason why the subsequent mortgagee should not retain the right of redeeming the mortgage even in the hands of the purchaser. Of course to realize the money due to the bank if the property is to be sold let it be sold in the same manner as a mortgaged property is sold in the civil court, so that a person who is not a party to the suit may if he likes to redeem pay the purchaser the money due to the bank and take away the property. Here it is probably meant that the right of redemption of the subsequent mortgagee should be extinguished. I do not find any clause which makes very clear that the right of redemption of a subsequent mortgagee would be extinguished. Reference made in clause 17

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and clause 20 gives some indication. I am not sure whether these provisions are quite sufficient to show that the right of redemption of a subsequent mortgagee would be extinguished. A simple mortgagee will not be affected by clause 17, but a subsequent usufructuary mortgagee will be disturbed. Another thing is that a lessee's possession would not be disturbed, but the possession of a mortgagee or purchaser will be disturbed. I think it is rather unfair. Lessee's possession is secured under clause 23, but not the possession of a purchaser or a subsequent mortgagee. That is rather unjust and such a thing ought not to be done. No doubt section 69 of the Transfer of Property Act was based entirely upon the notions of English Law which is due to historical reasons. Under the English law the mortgagee is really the owner of the property. But here the mortgagor has the right of redemption. The English notion is altogether different from the Indian notion. According to Indian notion the mortgagee has only the security right of the property and he can enforce that right alone. That is the fundamental difference between English mortgages and Indian mortgages. In such circumstances it would be rather hard to introduce such drastic provisions in this Act. After all the purchaser is not going to lose anything. He gets all the benefits of the Mortgage Bank. He will have paid all the amount due on the mortgage before redemption suit is decreed. I do not see why such a thing should not be done and why the interests of so many people should be affected merely because the Government are going to finance this bank and it is going to do some beneficent act. Therefore I think such a provision is unjust and it should not be adopted."

* Rao Bahadur Sir A. P. PATRO:—"My friend, Mr. Patnaik, is perfectly right on principle when he said that the provisions of the Transfer of Property Act should be enforced only wherever it is possible. Here in this we have not intended the same provisions of the Transfer of Property Act to be followed. With a view to facilitate the working of the Land Mortgage Bank we have invoked the provisions of the Transfer of Property Act. The question involved in this amendment is one of procedure. Hitherto in this section as drafted there was no right given to claimants, and no procedure was fixed. By amending this clause we have prescribed a procedure analogous to the procedure adopted in Civil Procedure Code, viz., Order XXI in regard to execution proceedings. So what we originally called the procedure should be discussed now and not the substantive right. The right is already conceded under a previous section. When they have got the right of sale there is no need to go back upon that provision. It is open to the hon. Member to say whether there is anything wrong in the procedure now adopted and if it is so, his remarks are relevant."

* MR. K. P. RAMAN MENON:—"The hon. Mr. Patnaik has started by saying that provisions of section 69 of the Transfer of Property Act are being engrafted in section 17 of this Act. As a matter of fact whatever rights have been conferred under section 69 with regard to mortgages in regard to the three cases contemplated under that section have

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already been conferred on the Land Mortgage Bank by the provisions of section 12 which we have already passed. Section 12 says that without the intervention of the Court the Land Mortgage Bank can sell the property and what we are now concerned with is how the sale should be effected."

Sriman M. G. PATNAIK Mahasayo:—"Sir."

* The Hon. the PRESIDENT:—"Even as the hon. Member does not like anybody else interrupting him, he should not also interrupt others when speaking."

* Mr. K. P. RAMAN MENON:—"The right to sell the property has already been conferred and it is too late now to say that that right is a very sacred right and dwell upon the difference between English law and Indian law on mortgages. Now clause 17 (1) deals with cases where leases and other alienations have taken place in respect of the property after it is sold. The second sub-clause of clause 17 deals with symbolical possession of the property in the possession of third parties with a valid clause to possession. Supposing the property has subsequently been mortgaged and he is in possession of the property. What is to be done with his possession? What are we to do with such cases? That is no doubt a point that has to be answered. There are two courses open to the subsequent mortgagee who has staked his money on the land although there has been previously a mortgage of such a land to the bank. He can pay all the money that is payable to the bank under section 14 and take that right to his possession of the property. If he does so he gets all the rights which the first mortgagee has. In the language of law he subrogates the position of the bank by satisfying its claims. If he does not do that his failure to do so does not take away his right of filing a suit and redeem the first mortgage which remains unaffected by the provisions of this Bill. There is nothing in section 12 which takes away that right. Every right which is conferred by the particular statute, viz., the Transfer of Property Act enures to him. The second mortgagee as a third party in this case would be very glad to redeem the mortgage from the bank and all the rights which are conferred upon the bank will certainly enure to him. So no difficulty will arise in matters of this sort. With reference to the claims on the mortgaged property which have arisen, there was no provision as to how such claims have to be investigated and orders passed before the property is disposed of. As the section was originally drafted this was not provided for. Now new sub-clause (3) provides for it. Now that new sub-clause (3) reads 'In dealing with cases under sub-clauses (1) and (2) the court shall follow as far as may be the provisions of Order XXI, Rules 95-103 of the Code of Civil Procedure, 1908.' Now, the only objection as far as I can see seems to be why should the second mortgagee be ousted at all? As a matter of fact his rights are not extinguished. Mortgages are either simple or usufructuary. A simple mortgagee will not be in possession of the property. A usufructuary mortgagee will be in possession of the property. Now a man who advances money on the property which has

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already been mortgaged to the bank takes a risk in lending money. He advances money on a land which he knows is liable to be sold under the provisions of section 12 of this Act. He enters the transaction with open eyes. Therefore he really knows what he is about and there will be no surprise to him if any difficulty arises. He has nothing to complain."

Rao Bahadur T. A. RAMALINGAM CHETTIYAR:—"I am sorry I cannot agree with the previous speaker. What is contemplated is this: under section 12 a sale can be effected and before the sale there is notice given and then the sale officer is appointed. He gives notice to all persons saying that all persons interested in the property may come in and redeem it. There is just the possibility of some people not getting the notice. In that case what would happen is the question now? Now section 20 is clear. If there is no notice given and if a sale is effected, the sale is valid but the person who has been ignored and to whom notice should have been given can sue for damages. That is clear. This is what section 20 says:—

'When a sale has been made in professed exercise of a power of sale under section 12 and confirmed by the Board, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised, but any person damaged by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the mortgage bank.'

12-15 P.m. The frame-work of this Bill is this: the power of sale is vested in the bank and is exercised by a sale officer appointed by Government. The Government exercise the power of sale on behalf of the bank. The Act provides that notice should be given before an application for sale is made and also after the application is made. The latter notice should be given by the sale officer appointed by Government. The sale extinguishes all the intermediate rights created between the mortgage and the sale, but if by any chance any mistake is committed the parties have a right to proceed against the bank. That is the frame-work of the Bill and the reason for this is that unless powers are given for speedy sale and speedy transfer of possession, it will be difficult for the bank to realize the moneys due under mortgages. It is with that idea that this provision has been made. It seems to me that the right given under section 20 to a person on whom notice has not been served by mistake is of a higher category than the ordinary right, because he can proceed against the bank which is a solvent agency. If he has suffered any damages he can proceed against the bank. In the first place, there is the surplus money available for him. But if it is not sufficient he has to thank himself. If on the other hand, he pleads that if there had been a proclamation or if he had been given notice he would have obtained more money, he has the right to sue the bank. Under the circumstances, I do not think that anybody can complain about the provision. If at all anybody has reason to complain, it is the bank who may complain that for the sins of the Government Officer they might be made liable.

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It will be a legitimate grievance for the bank and not for the intermediate mortgagees who may have come into existence between the time of the first mortgage and the time of sale. For these reasons, I do not think that the objection raised by Mr. Patnaik will hold good."

* Mr. T. C. SRINIVASA AYYANGAR:—"Sir, when a number of lawyers argue the same point, it sometimes happens that far from the doubts being set at rest more doubts seem to crop up. However that may be, every one of us is anxious to save the Bank from a catastrophe which may possibly overtake the Bank by suits for damages under section 20. Three clauses deserve attention in this connexion—clauses 12, 17 and 20. Clause 12 obliges the Bank or such authority in whom the power of sale is vested to give notice to all persons who have got interest in or a charge on the property. Clause 20 says that any irregular or unauthorized exercise of power or any improper exercise of power may entail upon the Bank the liability of paying damages. The difficulty is how to save the Bank and at the same time save the interests of persons who may have acquired a charge or a mortgage upon the property. I submit, Sir, that though the provisions which are made here are sufficient to safeguard the rights of both, still there is a material aspect requiring attention, viz., how to minimise the possibility of litigation. Here again we must go to the residuary clause—clause 21 which gives the rule-making power to Government. A rule should be made that, in the mortgage-deed that would be taken by the Bank, there should be a provision to the effect that if the mortgagor creates further mortgages or charges on his property, he ought to inform the Bank about it so that the Bank may readily give notice to all persons having interest in the property before exercising the power of sale. Therefore if the Bank is enabled by a provision of this sort to give notice which is obligatory under clause 12, to all persons concerned, we can avoid as much as possible the danger of subsequent mortgagees, etc., not being noticed and of the bank facing suits for damages.

"Now, as regards the clause now under consideration, I believe there will be no difficulty whatsoever about this matter if the amendment of the Hon. Minister is accepted. The amendment provides that the provisions of the Civil Procedure Code shall as far as possible be adopted in the matter of delivery. I think that is satisfactory. But as I said before, a rule will have to be made in the matter of making a provision for notice of the subsequent creation of charges to be given to the Bank. As for the prior charges, surely they would be examined before the mortgage is accepted. As for the future charges, the mortgagor should be put under obligation to inform the Bank."

* Diwan Bahadur M. RAMACHANDRA RAO:—"Mr. President, Sir, I should like to add a few words to what has been said by Mr. Ramalingam Chettiyar and Mr. Srinivasa Ayyangar. In the first place, it seems to me that Mr. Patnaik is under a great misapprehension as to the position of subsequent mortgages. The Townsend Committee recommended that mortgagors who borrow from the Land Mortgage Bank

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should be totally prohibited by law from creating subsequent mortgages on their property. We thought that it would be too great an interference with the rights of private parties and it is for that reason that all the safeguards about giving notice and giving an opportunity for payment of the loan to all those who have an interest in the mortgaged property have been provided in this Bill. The fact must be remembered that the Townsend Committee was fully aware of the complications that would be caused by subsequent encumbrances and mortgages created by a mortgagor. Therefore, the provisions that have been made give ample opportunities to the borrower to pay up the loan and nobody has any reason to complain. In the second place, I should also like to point out that the subsequent mortgagee has a lien on the balance of the sale-proceeds after paying up the first mortgagee. It must be remembered that if there is a sale by a first mortgagee the whole of the interest of the mortgagor is sold. Therefore, if there is a balance left after satisfying the first mortgage, any subsequent mortgagee would have a lien upon it. He cannot set aside the sale, but he can certainly take whatever is left after the claims of the first mortgagee are satisfied. In addition to that, as has been pointed out by Mr. Srinivasa Ayyangar, the right to sue the Bank has been provided in the section. The suggestion made by Mr. Srinivasa Ayyangar that a rule should be made to the effect that a provision should be inserted in the mortgage-deeds making it obligatory on the mortgagor to intimate to the Bank any subsequent mortgages or charges created on his property will be a very useful one and I hope and trust that the suggestion will be adopted in practice. I may say that in the earlier by-laws there was a provision to the effect that if a mortgagor creates a subsequent mortgage on his property, the whole money became due to the Bank at once. Such a provision was made in the by-laws, but we were advised that such a provision would be a clog on redemption and it would not be right to insert a provision like that. Therefore that by-law has been omitted in the present by-law. That we were fully aware of the complications that would be created by subsequent mortgages is shown by the fact that we had provided in the earlier by-laws that if a man after mortgaging his property to the Land Mortgage Bank chose to mortgage it to somebody else also, the whole money due to the bank became due at once. Such a provision was made because the Bank did not want to be dragged into court by subsequent mortgagees. But that provision has now been omitted and in its place we have introduced all these other provisions. I trust that hon. Members will recognize that we have done our level best to safeguard the interests of everybody. I appreciate the suggestion made by Mr. Srinivasa Ayyangar and we shall endeavour to introduce a clause calling upon the mortgagors expressly to tell us about subsequent encumbrances on their property. It is very necessary, because we cannot admit everybody as members of these co-operative societies. The mortgagor becomes a member of the co-operative society and if a subsequent mortgage redeems the first mortgage, he is also to be made

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a member of the co-operative society. There is all this difficulty to be got over. I think, Sir, there is nothing to fear for anybody either under clause 17 or clause 20."

* The Hon. Mr. P. T. RAJAN:—" Mr. President, Sir, hon. Members who are lawyers have dealt with the legal aspect of the question and I shall now deal with the practical aspect of it. By accepting this amendment, the Bank will not be involved in any suits and those who are interested in the mortgaged property will also have an opportunity before actual delivery is made to the purchaser of the property. I think the House will accept the amendments."

The amendments were put and carried.

Clause 17, as amended, was put and carried.

Clause 18.

* The Hon. Mr. P. T. RAJAN:—" Mr. President, I beg to move the following amendment:—

(i) *In line 1, after the words "to a mortgage bank," insert the words "or the Central Mortgage Bank."*

(ii) *In lines 2 and 3, for the words and figures "under section 13," substitute the words "under this chapter."*

The Central Mortgage Bank has been authorized under section 22 to exercise all the powers of a mortgage bank before the bank sells a mortgaged property. Such being the case, the Central Mortgage Bank must be empowered to purchase the property, if necessary. The other amendment is merely a verbal alteration."

Mr. V. P. NARAYANAN NAMBIYAR:—" I second it."

The amendment was put and carried.

Clause 18, as amended, was put and carried.

Clause 19.

Sub-clause (2).

* The Hon. Mr. P. T. RAJAN:—" Mr. President, I beg to move the following amendment:—

'In sub-clause (2), in lines 3-4, omit the words "or by the court having jurisdiction to enforce the mortgage."

In sub-clause (3), in lines 2-3, omit the words and figures "in accordance with the provisions of sub-section (1)."

As the receiver is appointed by the Board, it is thought unnecessary to give the court any power to remove him; hence the first amendment. The second amendment merely deletes words which are considered to be superfluous."

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Mr. C. BASU DEV:—"I second it."

The amendments were put and carried.

Clause 19, as amended, was put and carried.

Clause 20.

The Hon. Mr. P. T. RAJAN:—"Sir, I beg to move—

'In lines 2-3, for the words "confirmed by the Board," substitute the words and figures "has been confirmed under sub-section (3) of section 14".'

As a result of the amendment passed to clause 14, it is not the Board but it is the Deputy Registrar who confirms the sale. Hence this amendment."

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

The amendment was put and carried.

Clause 20, as amended, was put and carried.

Clause 21.

Sub-clause (2).

* The Hon. Mr. P. T. RAJAN:—"Sir, I move the following amendment:—

'(i) In line 1 of sub-clause (v), for the words "for the carrying out of the," substitute the words "for carrying out the".'

This is only a verbal amendment.

'(ii) Renumber sub-clauses (1) and (2) as clauses 21 and 21-A, respectively.'

These two clauses deal with two different matters; hence this amendment."

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

The amendment was put and carried.

Clause 21, as amended, and clause 21-A were put and carried.

Clause 22.

The Hon. Mr. P. T. RAJAN:—"Sir, I beg to move—

'For this clause, substitute the following clauses:—

"22. Where any property mortgaged to a mortgage bank is wholly or partially destroyed or the security is rendered insufficient and the mortgagor, having been given a reasonable opportunity by the committee of the mortgage bank, of providing further security enough to render the whole security sufficient or of repaying such portion of the loan as may be determined by the committee, has failed to provide such security or to repay

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such portion of the loan, the whole of the loan shall be deemed to fall due at once and the committee shall be entitled to take action against the mortgagor under section 8 or section 12 for the recovery thereof.

Explanation.—*A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the by-laws of the mortgage bank."*

I think much explanation is not needed from me to commend this amendment to the House. If it is found that the security is not sufficient for some reason or other, provision is made to take additional security. I hope the House will accept it."

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

The amendment was put and carried.

Clause 22, as amended, was put and carried.

New clause 22-A.

* The Hon. Mr. P. T. RAJAN:—"Sir, I beg to move the following amendment:—

'Add the following clause as a new clause [Clause 22-A (d)]:—

"22-A (1) The Board or the trustee may direct the committee of a mortgage bank to take action against a defaulter under section 8, section 12 or section 22 and if the committee neglects or fails to do so, the Board or the trustee may take such action.

• (2) (a) *Where such action is taken by the Board, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the mortgage bank and to its committee in the said provisions were references to the Central Mortgage Bank and the Board respectively.*

(b) *Where such action is taken by the trustee, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the mortgage bank or to its committee in the said provisions were references to the trustee."*

If the committee of the primary bank fails to take action in the first instance, the Central Bank and the Board will have to take action; or, the trustee will have to take action. When the action is taken by the Board of the Central Bank or by the trustee, provisions of this Act and of any rules or regulations made thereunder shall be made applicable to the Board or trustee."

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Mr. V. P. NARAYANAN NAMBIYAR:—" I second it."

The amendment was put and carried, and the new clause formed part of the Bill.

Clause 23 was then put and carried.

Clause 24.

* The Hon. Mr. P. T. RAJAN:—" Sir, I beg to move the following amendment:—

' In line 7, for the words " with a view of giving," substitute the words " in order to give ".'

" This is merely a verbal amendment."

Mr. V. P. NARAYANAN NAMBIYAR:—" I second it."

The amendment was put and carried.

Clause 24, as amended, and clause 25 were put and carried.

Clause 26.

* The Hon. Mr. P. T. RAJAN:—" Sir, I beg to move the following amendment:—

' (i) In lines 4-5 for the words and figures " Transfer of Property Act (IV of 1882) " substitute the words and figures " Transfer of Property Act, 1882 ".'

This is a verbal amendment.

' (ii) Add the following proviso at the end:—

" Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the mortgage bank towards the debt, but such receipt shall not prejudice the right, if any, of such person, to recover the balance claimed by him."

This provision is made to meet any contingency of a bona fide dispute between the mortgagor and the creditor in regard to the amount of debt to the latter; if there is any trouble, there will be this right to go to the civil court."

Mr. V. P. NARAYANAN NAMBIYAR:—" I second it."

The amendment was put and carried.

Clause 26, as amended, was put and carried.

Clause 27.

* The Hon. Mr. P. T. RAJAN:—" Sir, I move—

' (i) In lines 3-4 of sub-clause (1), for the words " a Director, or Secretary or any other officer " substitute the words " any Director, Secretary or other officer."

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‘ (ii) In line 4 of sub-clause (2), for the words “ such Director or Secretary ” substitute the words “ such Director, Secretary or officer ”.’

“ This is merely a verbal amendment.”

Mr. V. P. NARAYANAN NAMBIYAR:—“ I second it.”

The amendment was put and carried.

Clause 27, as amended, and clause 28 were put and carried.

Clause 29.

* The Hon. Mr. P. T. RAJAN:—“ Sir, I beg to move the following amendment:—

‘ Substitute the following for clause 29:—

“ 29 (1) Where a mortgage executed in favour of a mortgage bank either before or after the passing of this Act is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members thereof, whether major or minor, the burden of proving the same shall, notwithstanding any law to the contrary, lie on the party raising it.

(2) For the purpose of this section, the following shall not be regarded as purposes not binding on a member of the joint Hindu family, namely:—

(a) the improvement of agricultural land or of the methods of cultivation; and

(b) the purchase of land.”’

“ In the clause as passed by the Select Committee minors and people with limited interest were given the opportunity of questioning the transaction but the burden of proof was shifted to them. It was pointed out that it would be unfair especially in the case of the minor that he should be made responsible for any contract entered into or any debt incurred by the guardian improperly. These two categories of people have been removed from the purview of this provision. The bank should take such precautions as are necessary in its interest in case it lends money to minors and people with limited interest in the property. But in the case of joint families, as the clause is worded now, though it is open to them to call into question the transactions between the bank and the managing member of the family, yet, the onus of proof lies on them. This change was introduced mainly with a view to meet the objections raised by some of the hon. Members of the House, and I hope the amendment will be accepted.”

12-45
p.m.

Mr. V. P. NARAYANAN NAMBIYAR:—“ I second the amendment.”

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* Mr. T. C. SRINIVASA AYYANGAR:—"Sir, I desire only to raise the question whether in this clause we should necessarily insert item (2) (b) 'the purchase of land;' whether the purpose of the Bill will not be served by merely enacting a new rule regarding the onus of proof, and introducing the provisions contained in sub-clause (2) (a); and whether it would not be desirable to delete sub-clause (b). It will very easily lend itself to be exploited in many cases. Of course the bank is not likely to suffer; but will it not introduce an element of infringement of the general law? I think we had better draft this clause with greater care. I do not desire to say that the Select Committee or the gentlemen who considered the Bill have not considered this point carefully. There is a great deal that can be said for both sides. However that may be, the addition of sub-clause (b) seems to me to be unnecessary, and its deletion will not in any way affect the proper or smooth working of this Act. If it is found later on that such a provision is necessary, it may be introduced. But now to introduce it would give, in my opinion, considerable scope for speculation and for exploitation of the provision."

* Rao Bahadur T. A. RAMALINGAM CHETTIYAR:—"Sir, so far as the caution that was given to us by Mr. Srinivasa Ayyangar is concerned, I quite agree with him. There have been many cases in which by the purchase of additional land, several families have been ruined. But the object of this provision is different. It does not, Sir, enable the societies to lend money in all cases that come up before them for the purchase of land. There are cases in which for the better enjoyment of the land already possessed, an additional land, or a portion of land which would make agricultural operations really beneficial, will have to be purchased. It is only in such cases that I think the banks will be justified in lending money and not for speculative purchase of new land. It is only such cases that are sought to be protected by this provision. Of course the provision as it stands will cover even cases of speculative purchase as well; but in the actual working of the provision, I think the banks will be instructed that they ought not to lend money for speculative purchase but that they should lend money only in cases which I mentioned, i.e., cases where, for the better cultivation of land, an additional piece of land near by may have to be purchased, or where one person possesses three-fifths of a land and the two-fifth is coming up for sale and it is found in the interests of everybody that one person should possess the whole, etc. It is only in that sense that this provision has been made. As I said, as the clause stands, no doubt, it will cover cases of speculative purchase; but that will be guarded against by the by-laws that are framed on the question of the lending of money by the societies."

Sriman M. G. PATNAIK Mahasayo:—"Mr. President, Sir, the hon. Mr. Srinivasa Ayyangar was alarmed that he finds a clause here which would trench upon the Hindu law; but he was not alarmed when the

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mortgage law was thrown to the winds, and he looked on with complacency at that time. Now he thinks that when new property is purchased, there will be some trouble; i.e., he refers to cases where the purchase of land is considered to be beneficial and binding on the joint family property; and he is alarmed. But what I say is: this is a special legislation which is intended to be very beneficial, and, therefore, Sir, he must throw to the winds not only the mortgage law but also the Hindu law."

* Diwan Bahadur M. RAMACHANDRA RAO:—" Sir, in order to avoid further discussion on this clause, may I say that in the by-laws of the primary banks as regards loans for purchase of land, it is laid down as follows:

'Loans may be given for the following purposes: purchase of land in special cases on condition that such purchase will enable the purchaser to round off a holding and work it more economically.'

"That is in the by-laws, and I will give my friend the assurance that this by-law will be there, and if necessary we shall make it quite clear that the primary banks are not permitted to lend money for the purchase of new land, or for purposes other than those mentioned in the by-laws. It was never intended that we should enable managers to purchase landed properties without any limitation as suggested by my friend. But in special cases—say, where there are three brothers and one brother wants to sell away his portion of the property or where there are two acres of land near by which the party wants to acquire for the better enjoyment of his other property—it will be difficult to avoid permitting a person to purchase a small plot, in order to enable him to work his holding much more economically than otherwise he could. It is certainly not intended to lay down a rule that the primary banks can lend money for the purchase of land, apart from the particular circumstances mentioned in the by-laws. We shall bear this in mind and see that the by-law is laid down in much stricter language than now. We have been receiving applications all along, and we have never met with a case hitherto of a loan purely intended for the purchase of new land and nothing else. We are perfectly aware, Sir, of the dangers of granting to the managers of joint families loans from the banks for the purchase of lands."

Mr. K. R. VENKATARAMA AYYAR:—" Sir, possibly the difficulty mentioned by Mr. Srinivasa Ayyangar may be met by a slight alteration in the wording of the opening part of sub-clause (2). That portion now reads: 'For the purpose of this section, the following shall not be regarded as purposes not binding on a member of the joint Hindu family.' That seems to have the effect, as it were, of saying that the purposes (a) and (b) shall be held by the court as purposes binding on the junior members of the Hindu family. It makes very little difference whether you say: 'It shall be regarded as binding on the junior members of the Hindu family' or 'it shall not be regarded as not binding on the junior members of the Hindu family.' Perhaps the intention of the draftsman of this clause was not so much to compel the court to

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hold these purposes to be binding upon the junior members, but apparently to get rid of the Hindu law view that this category of purposes shall be outside the range of 'binding purposes.' Because, it is easily assumed here to be the notion of Hindu law that a managing member of a joint family ought not to encumber the joint family property merely for the purpose of purchasing another item of property. Such a purpose shall be deemed to be outside the range of competency of the managing member—that is the general Hindu law view. If the object in this legislation is merely to relax that rigid view of the Hindu law to a degree in favour of the mortgage banks—and there is good reason for such relaxation, because the mortgage banks do not advance moneys to every intending borrower who wants to buy land—but the mortgage banks make the very best of enquiries to satisfy themselves that in the particular circumstances of the application for loan, the purchase of the fresh property on behalf of the family is appreciated by the family to be a beneficial purpose, from the point of view of even the junior members of that family. The object, I think, can be met by saying in the opening part of this sub-clause: 'the following shall not be regarded as purposes incapable of binding a member of the Hindu family' that really means to say: 'let not the court take it to be a purpose which cannot possibly be binding.' But whether it is actually binding or not will depend upon the question as to how far the purchase is beneficial. I think if some such alteration is agreed to by those who are responsible for the present language, the point of the objection will stand removed and the bank also will stand sufficiently protected."

Rao Bahadur Sir A. P. PATRO:—"Sir, it has been very well pointed out by my Friend Mr. Srinivasa Ayyangar that this provision covers a wide ground and gives rise to propositions which are contrary to Hindu law. Moreover, a perusal of the clause—I am sorry I was not present at the time this clause was discussed yesterday—will show that

'the following shall not be regarded as purposes not binding on a member of the joint Hindu family, namely:—

(a) the improvement of agricultural land or of the methods of cultivation.'

Well, how are you going to define 'improvement of agricultural land' and 'methods of cultivation?' They are too vague and general to be introduced into a statute. As regards purchase of land, the only justification which Mr. Ramalingam Chettiar and Mr. Ramachandra Rao pointed out was that it may be a case of a co-owner who wants to sell a piece of land, or it may be a case of rounding off a small bit of land, etc. All those are mere exceptions, and do not come under the general law. Therefore, if the Hon. the Minister will agree to introduce the language of the by-law which Mr. Ramachandra Rao just now read out to us, viz., that the grant of loan would be limited to particular classes of cases, then the difficulty would be largely minimised and it would not give such a wide and large power to either the bank or the manager as now. At present, the purchase of land is not at all one that would be recognized as binding on the family.

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[Sir A. P. Patro]

“ In respect of improvements to lands, loans could be obtained 1 p.m. under the Land Improvements Act, and the Agriculturists Loan Act. You are again giving the manager power to borrow from the Land Mortgage Bank. These are very large powers which are considered to be very difficult to be determined by the Courts of Law. This will be giving the managers more powers than are necessary in the interests of the joint family. I would therefore suggest that it would be better if the language of the by-law is introduced in this clause and it is redrafted. Diwan Bahadur M. Ramachandra Rao read out the by-law. The by-laws may be changed from time to time with the consent of the Registrar. So, it would be better to have the provisions contained therein in the substantive statute itself. This will save a lot of confusion and will be consistent with the provisions of the Hindu Law.”

* Mr. K. P. RAMAN MENON:—“ Mr. President, Sir, after all, it is only a question of presumptions. It may sometimes be necessary for a manager to purchase a few cents of land to round off his property here and there; it may also be necessary for him to purchase lands adjacent to his own in the interests of harmony in the family. Why should there be any change in the ordinary presumption which governs cases like this? As has been pointed out by Mr. Srinivasa Ayyangar there is considerable doubt as to the position of a guardian in respect of loans contracted by him, whether they will be regarded as having been taken for improvements in the land or only as a matter of speculation. Sir, as regards the method of cultivation referred to in this clause the methods of cultivation are various and it would be difficult to imagine what are all the methods of cultivation, which are within the purview of this provision here. This particular clause practically corresponds to the explanation given under clause 29 of the Bill as amended by the Select Committee. May I suggest that this may be dropped altogether and the courts may be left to draw their own presumptions with reference to particular cases coming up before them. If a purchase is made, for example, of portions of land lying on the boundary, perhaps the court may hold that it was in the interests of the family. If loans are taken as a matter of speculation the court may hold them to be not binding on the family. Instead of trying to define what presumptions ought to be drawn it would be better to leave the courts to do it on the merits of specific cases. Why should we in this clause be adding a presumption? As a matter of fact I have my own doubts as to whether this is not trenching upon the Indian Evidence Act with reference to presumption and as such for introducing this it may be necessary to have a further sanction of the Viceroy. This clause is adding a presumption to the number of presumptions laid down in section 114 of the Indian Evidence Act and as such further sanction by the Viceroy may be required in this particular matter. I will leave to the Hon. Minister to say whether it is necessary to have this explanation added or to leave alone the courts to draw their own presumptions on the circumstances of each concrete case.”

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* The Hon. Mr. P. T. RAJAN:—" Mr. President, Sir, hon. Members have pointed out certain difficulties which may arise in retaining sub-clause (2). As has been pointed out by my Friend, Mr. Ramalingam Chettiyar and Mr. Ramachandra Rao, there may be occasions in which it may be necessary that loans may have to be sanctioned for the purchase of land. My Friend, Mr. Ramachandra Rao, has read out in what cases money will be advanced for the purchase of land. But as far as Government are concerned, they will direct the Registrar to see that those by-laws are kept up and see that the banks do not lend money for purposes of purchase of land unless there are special reasons. If in practice it is found that banks abuse their powers, it will be time enough for the Government to bring in an amendment to the clause. I am told that the by-laws of the bank would not be altered except with the sanction of the Registrar. As such, I do hope this explanation will be sufficient to satisfy hon. Members."

The amendment was put and carried.

Clause 29, as amended, was put and carried.

Clause 30.

* The Hon. Mr. P. T. RAJAN:—" Sir, I beg to move—
' that this clause be deleted.'

" Provision has been made elsewhere in section 6 (a); hence the motion."

Mr. V. P. NARAYANAN NAMBIYAR seconded the motion.

The amendment was put and carried and clause 30 was deleted.

Clause 31.

* The Hon. Mr. P. T. RAJAN:—" Sir, I beg to move—
' In line 2, omit the words " so far as may be."

' In line 3, for the words " from their own funds," substitute the words " from funds which have not been borrowed from the Central Mortgage Bank." ' "

Mr. V. P. NARAYANAN NAMBIYAR seconded the motion.

The amendment was put and carried.

Clause 31, as amended, was put and carried.

Clause 32.

* The Hon. Mr. P. T. RAJAN:—" Sir, I beg to move—
' For this clause, substitute the following:—

" 32. Whenever under the provisions of this Act notice is required to be given to any person in writing, it shall be sufficient to send such notice by registered post."

This is only to make the position clear."

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Mr. V. P. NARAYANAN NAMBIYAR seconded the motion.

The amendment was put and carried.

Clause 32, as amended, was put and carried.

Clause 33.

* The Hon. Mr. P. T. RAJAN:—" Sir, I beg to move—

' For this clause, substitute the following:—

" 33. The Board may, if it thinks fit, delegate all or any of its powers under sections 12, 19, 22 and 22-A to an executive committee constituted by it and consisting of two or more of its members." "

Mr. V. P. NARAYANAN NAMBIYAR seconded the motion.

The amendment was put and carried.

Clause 33, as amended, and clause 34 were put and carried.

New Clause 35.

* The Hon. Mr. P. T. RAJAN:—" Sir, I beg to move—

' After clause 34, add the following clause:—

" 35. At any sale of movable or immovable property held under the provisions of this Act in order to recover any money due to a mortgage bank, no Director, Secretary or other officer of such bank or of the Central Mortgage Bank (except on behalf of the bank of which he is a Director or Secretary or an officer) and no sale officer or other person having any duty to perform in connexion with such sale, shall either directly or indirectly, bid for or acquire or attempt to acquire any interest in such property." "

" No further explanation on this clause is needed than that it is intended to guard against any possible fraud and keep the officials of the bank above suspicion."

Mr. V. P. NARAYANAN NAMBIYAR seconded the motion.

Mr. K. KOTI REDDI:—" Mr. President, Sir, I just want a piece of information from the Hon. Minister. Supposing a Secretary or Director acts contrary to this clause, what will be the result? There is no penalty attached to a violation of the rule. In such a contingency, is there any provision in the Act which lays down that the transaction will become invalid? "

Mr. K. P. RAMAN MENON:—" This difficulty occurred to me also this morning. If this is a lacuna this occurs in the corresponding provisions in the Civil Procedure Code also and as it is not creating

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difficulties in its application, I thought there was no harm in the provision as it is. Once it is stated that such a purchase is invalid, purchases in contravention of such a provision will be *ipso facto* invalid."

* Mr. C. BASU DEV:—"Mr. President, I entertained also the same doubt just given expression to by Mr. Raman Menon. This is an irregularity and it would have been better if provision was made for setting aside the sale on the ground of at least this irregularity."

The amendment was put and carried and new clause 35 formed part of the Bill.

New Clause 36.

* The Hon. Mr. P. T. RAJAN:—"Sir, I move that the following be added as clause 36:—

'36. *The provisions of sections 102 and 103 of the Transfer of Property Act, 1882, and of any rules made by the High Court under section 104 of that Act for carrying out the purposes of the said sections, shall apply, so far as may be, in respect of all notices to be served under this Act.*'

"This is done with a view to enabling the application of the provisions of the Transfer of Property Act specifically to notices under sections 12, 13 and so on."

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

The amendment was put and carried and new clause 36 formed part of the Bill.

Clause 3.

The Hon. Mr. P. T. RAJAN:—"Sir, I move—

'In clause 3, delete sub-clause (g).'

Sub-clause (g) says: 'Sale officer' means—

(i) *in relation to the sale of movable property distrained, an officer appointed under section 11; and*

(ii) *in relation to the sale of immovable property mortgaged to a mortgage bank, an officer appointed under section 21.*

In view of the amendments carried to clauses 8, 12, 13 and 14, I think, this definition is unnecessary and may be deleted."

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

The amendment was put and carried and sub-clause (g) was omitted.

Clause 3, as amended, was then put and carried.

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Appendix.

The Hon. Mr. P. T. RAJAN:—"Sir, I move—

'Omit the *Appendix*.'

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

The amendment was put and carried.

The Hon. Mr. P. T. RAJAN:—"Mr. President, I beg to move—

'Renumber the clauses in the numerical order.'

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

The motion was put and carried.

Preamble.

* The Hon. Mr. P. T. RAJAN:—"Sir, I move that—

'In the Preamble for the words "Whereas it is expedient to facilitate the working of co-operative land mortgage banks in the Presidency of Madras" substitute the words "Whereas it is expedient to supplement the provisions of the Madras Co-operative Societies Act, 1932, in order to facilitate the working of co-operative land mortgage banks in the Presidency of Madras," and, in line 4, after the words "owners of land" insert the words "or other immovable property."'

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

* Diwan Bahadur M. RAMACHANDRA RAO:—"Mr. President, it seems to me that this amendment has to be slightly modified. There is one small omission here. The existing wording is this: 'Whereas it is expedient to facilitate the working of co-operative land mortgage banks in the Presidency of Madras.' I suggest an amendment as follows: 'Whereas it is expedient to supplement the provisions of the Madras Co-operative Societies Act, 1932, in order to facilitate the working of co-operative land mortgage banks in the Presidency of Madras' and then come the words 'in order to provide for the grant of long-term loans . . .'. I suggest that the second 'in order' may be removed and substituted with the words 'with a view to provide.'"

* The Hon. the PRESIDENT:—"But, I am afraid there will be two 'with a view's' then."

Mr. K. R. VENKATARAMA AYYAR:—"The second 'with a view' may be deleted."

Diwan Bahadur M. RAMACHANDRA RAO:—"That is so. I second the amendment that the second 'with a view' be deleted."

* The Hon. the PRESIDENT:—"I will put the preamble, as sought to be amended, to the vote of the House."

472 A BILL TO FACILITATE THE WORKING OF CO-OPERATIVE LAND
MORTGAGE BANKS IN THE PRESIDENCY OF MADRAS (BILL NO. 5 OF 1933)

[The President]

[19th March 1934]

“ The question is :

‘ WHEREAS it is expedient to supplement the provisions of the Madras Co-operative Societies Act, 1932, in order to facilitate the working of co-operative land mortgage banks in the Presidency of Madras with a view to provide for the grant of long-term loans to owners of land or other immovable property to enable them to discharge their debts, to carry out agricultural improvements, to acquire land for the formation of economic holdings and other like purposes and thereby to promote thrift and self-help among them;

‘ AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act; It is hereby enacted as follows:—’ ”

The motion was carried and the Preamble as amended, formed part of the Bill.

The House then adjourned to meet again at 11 a.m. the next day.

R. V. KRISHNA AYYAR,
Secretary to the Legislative Council.

